

October 30, 1968

THE LEGISLATIVE CLEARANCE FUNCTION

The legislative clearance function is intended to serve the needs of the President in carrying out his legislative responsibilities and is a joint activity of the Bureau of the Budget and the executive branch agencies. It can also be helpful to the Congress and the agencies in meeting their responsibilities. The purpose of this memorandum is to outline the origin and development of the clearance function, to describe briefly how it works, and to summarize its purposes.

Background

The basic rules for enactment of laws are set forth in Article I of the Constitution.

A description of the congressional legislative process is contained in the pamphlet, "How Our Laws are Made," prepared by Charles Zinn for the House Judiciary Committee (House Document No. 125, 90th Congress, May 22, 1967). A shorter pamphlet, "Enactment of a Law," covers the same subject and was prepared by Floyd Riddick for the Secretary of the Senate (Senate Document No. 35, 90th Congress, June 12, 1967).

The President's legislative responsibilities are founded in his constitutional duties and powers to: (1) require the opinion in writing of the principal officer in each of the executive departments, (2) take care that the laws are faithfully executed, (3) give the Congress information on the state of the Union, (4) recommend to the Congress such measures as he judges necessary, (5) approve or disapprove bills passed by the Congress, and (6) convene either or both Houses of Congress.

The legislative clearance function originated in the early 1920's in the Administration of President Harding. In its initial years, the clearance function was largely confined to bills involving expenditures, but it was later extended by President Roosevelt to all bills. A detailed description of the development of the legislative clearance function is contained in an article by Richard Neustadt, "The Growth of Central Clearance," in the American Political Science Review of September 1954.

Budget Bureau Circular A-19, issued at the direction of the President, sets forth the basic guidelines and procedures for carrying out the function. These procedures have been substantially the same for the last 20 years.

Description of Current Clearance Procedures

The clearance function covers agency legislative proposals, agency reports and testimony on pending legislation, and enrolled bills.

Legislative Proposals--All bills which agencies wish to transmit to the Congress are sent to the Bureau of the Budget for clearance. There they are reviewed and a determination is made on what additional data and information are needed and what other agencies have substantial interests and should be asked to comment.

Agencies whose views are asked may favor a draft bill or have no objection. It is likely, however, that one or more of them will propose substantive or technical amendments, or perhaps a complete substitute. Divergent views may be reconciled by telephone or by letter. If appropriate, a meeting of the interested agencies will be arranged by Bureau staff.

In its review of draft bills, the Bureau applies existing Presidential policies. If significant issues arise which are not covered by such policies, it seeks appropriate Presidential direction.

After review, analysis, resolution of issues, and obtaining appropriate policy guidance, the Bureau advises the proposing agency that (1) there is no objection from the standpoint of the Administration's program to the submission of the proposed draft bill to the Congress, (2) the proposed bill is consistent with the Administration's objectives, or (3) the proposed bill is in accord with the President's program. This "advice" is conveyed by the submitting agency to the Congress in its transmittal letter. On the other hand, if the agency is advised that its proposed bill conflicts with an important Administration objective, or is not in accord with the President's program, it may not transmit the bill to the Congress.

The above are simply illustrative of the range of advice given, and there are many possible variations or qualifications, including suggested amendments to eliminate other agencies' objections.

Reports on Pending Legislation--If agencies are asked by congressional committees to report or testify on pending legislation or wish to volunteer a report, similar clearance procedures are followed. Agencies are given "advice" which they transmit in their reports or include in their testimony.

Enrolled Bills--After Congress has completed action on a bill, it is enrolled and sent to the President for his approval or disapproval. The Constitution provides that the President shall take action within 10 days after receipt of the bill, not including Sundays.

To assist the President in deciding his course of action on a bill, the Bureau requests each interested agency to submit within 48 hours its analysis and recommendation in a letter to the Bureau, signed by the head of the agency or other Presidential appointee. The Bureau prepares a memorandum to the President on the enrolled bill which transmits these views letters and summarizes the issues and various views and recommendations. If an agency recommends disapproval or a signing statement, it is responsible for preparing a draft of an appropriate statement for the President's consideration.

Volume of Activity--During the 90th Congress, about 26,500 bills and joint resolutions were introduced in the two Houses. The agencies submitted to the Bureau for clearance more than 10,000 proposed reports on bills and more than 850 draft bills. The Bureau received congressional committee requests for its views on over 2,500 bills. The 90th Congress enacted more than 1,000 public and private laws.

Relationship to the President's Legislative Program

The legislative recommendations of the President in his three regular annual messages -- State of the Union, Budget, and the Economic Report -- together with those in any special messages or other communications to the Congress generally constitute the President's legislative program. These recommendations have had their origin in many sources. One major source is the agencies themselves. Each year, along with their budgets, departments and agencies submit to the Bureau proposed agency legislative programs for the coming session of Congress. The more important items are identified and referred to the White House for consideration.

Other major sources include bills introduced in the Congress, and proposals of commissions, panels, and task forces established by law or by administrative order to examine and recommend on particular subjects.

In conjunction with the legislative clearance function, the Bureau and the agencies assist the White House staff in the development of the President's program. Each President develops his legislative program, of course, through methods of his own choice; and the form and nature of Bureau and agency assistance vary, depending on the President's wishes. Almost always, however, it has involved the application of clearance procedures to the draft bills which are prepared to carry out the President's legislative recommendations.

The existence of the President's program gives the legislative clearance process coherence, a set of goals, and greater significance. It provides general guidance for the executive branch, both in shaping proposals which are not part of the President's program and in commenting on bills before the Congress.

Purposes of the Clearance Function

As noted earlier, the function is essentially a staff service for the President performed in accordance with his wishes and designed to assist him in carrying out his legislative responsibilities. It has several purposes, of which some assist the Congress and the executive branch agencies themselves, as well as the President:

- it provides a mechanism for bringing together and staffing out agency legislative proposals which the President may wish to include in his legislative program;
- it helps the executive agencies develop draft bills which are consistent with and which carry out the President's policy objectives;
- it is a means of keeping Congress informed (through the "advice" transmitted by the agencies) of which bills are part of the President's program and of what the relationship of other bills is to that program;

- it provides a mechanism for assuring that Congress gets coordinated and informative agency views on legislation which it has under consideration;
- it assures that bills submitted to Congress by one executive agency properly take into account the interests and concerns of other affected agencies and will therefore have the general support of such agencies;
- it provides a means whereby divergent agency views can be reconciled.

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